IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7133 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MADANSING BHOPALSING DEVADA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7133 of 2003

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

MS MITA PANCHAL Ld. AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 08/10/2003

ORAL JUDGEMENT

Leave to amend the name of father of the petitioner in petition as well as in Index etc. to

Bhopalsing in place of Bholagsing.

By way of this special civil application, the petitioner has challenged the order of detention passed against him by the Police Commissioner, Rajkot city on 12.5.2003 under the exercise of powers under sec. 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "the PASA Act" for short).

The grounds served upon the petitioner and placed on record reveal that the detaining authority relied upon three offences registered against the petitioner under sec. 66B, 65A,E,116B and 81 of the Bombay Prohibition Act whereby the petitioner alleged to have been found in possession of foreign liquor. The detaining authority also relied upon the statements of the witnesses recorded in-camera by the sponsoring authority on 6.5.2003 and 22.2.2003 and verified by the detaining authority on 10.5.2003 revealing the incidents of 19.12.2002 and 22.2.2003. From the above material, the petitioner was declared as bootlegger and the order impugned came to be passed against him.

Heard ld. advocate Mr. HR Prajapati for the petitioner and ld. AGP Ms. Panchal for the respondents were heard at length. Affidavit in reply filed by the detaining authority which is placed on record, is also taken into consideration.

Out of various contentions raised on behalf of the petitioner and controverted by ld. AGP, it appears that the matter can be disposed of on the ground that whether any delay has been caused in passing the order of detention. The chronology as narrated above reveals that the last offence came to be registered against the petitioner on 4.1.2003 and, thereafter, the sponsoring authority recorded the statements only on 6.5.2003 revealing the incidents of 19.12.2002 and 22.2.2003. The statements were verified on 10.5.2003 and order came to be passed on 12.5.2003. If the last date of the offence registered against the petitioner is taken into consideration than the order came to be passed after four months from that date. Even if the unreported incidents are taken into consideration occurred on the above referred dates, than also it clearly appears that the order of detention has been passed with delay. The

detaining authority in affidavit in reply in para-14 has explained the delay and has narrated that the petitioner was arrested in the crime registered against him on 6.5.2003, 7.5.203 and 2.5.2003 respectively. After his arrest, the sponsoring authority was collecting the material against the petitioner and after collecting the material it was placed before the detaining authority and the order came to be passed on 12.5.2003 and, therefore, there was no delay in passing the order in view of the detaining authority. Any how, having regard to the above referred dates and the facts and circumstances of this case, it clearly appears that the explanation offered can hardly be said to be the sufficient explanation for passing the order with delay and, therefore, the facts of this case is squarely covered by a decision of the Apex Court in the matter of Pradeep N. Paturkar vs. S. Rammurthi as reported in AIR 1994 SC 656 and the decision of this Court in the matter of Elesh Nandubhai Patel vs. Commissioner of Police, Ahmedabad city, as reported in 1997(1) GLH 381. Therefore, the order impugned is required to be quashed and set aside on this ground alone.

In the result, this special civil application is allowed. The order impugned in this special civil application passed on 12.5.20033 by the Police Commissioner, Rajkot city under the PASA Act against the petitioner is quashed and set aside. The petitioner is directed to be set at liberty forthwith, if he is not required to be detained in jail for any other purpose. Rule made absolute with no order as to costs.

(J.R. VORA, J.)
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